IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Appl. No. 825 of 2005
In
Criminal Misc. Appl. No.527 of 2004
(Old No.11397/1991)
With
Criminal Misc. Appl. No. 528 of 2004
Criminal Misc. Appl. No. 529 of 2004

Dr. Bharat Tiwari
S/o Shri Ayodhya Prasad Tiwari
R/o New Ludhiyana
Dharam Shala
Jessa Ram Road, Haridwar
District Haridwar .....Applicant

Versus

1. State of Uttaranchal
2. Jagdamba Prasad Tiwari
   S/o Sri Thakur Prasad Tewari
   R/o Manafer Nai Ludhiyana
   Dharam Shala
   Jassa Ram Road,
   Srawan Nath Nagar
   Haridwar, Distt. - Haridwar .....Respondents

Shri Vivek Shukla, learned counsel for the applicant.
Shri G.S. Sandhu, learned A.G.A. for the State

JUDGMENT

Hon'ble J. C. S. Rawat, J.

1. This petition under Section 482 Cr.P.C. was preferred by Dr. Bharat Tiwari for quashing the proceedings in criminal case No. 3316/1990 Jagdamba Prasad Tiwari Vs. Moolchand and others pending in the court of Chief Judicial Magistrate, Haridwar.

2. After hearing the parties, this Court dismissed the petition vide order dated 16.07.2005. Thereafter the petitioner has moved an application with a prayer to review / cure the judgment and order dated 16.07.2005 passed in Criminal Misc. Application No. 527/2004 Dr. Bharat Tewari Vs. State of Uttaranchal and another.

3. It is alleged in the order that the final judgment passed by this Court on 16.07.2005 in Criminal Misc. Application No. 527/2004 Dr. Bharat Tewari Vs. State of Uttaranchal and another due to inadvertent mistake is based upon a wrong fact assuming that the complaint against the opposite party no. 2 Jagdamba Prasad Tiwari was filed by the present applicant. Pursuant to the above noted finding, this Court made entire observation and dismissed the Criminal Misc. Application No. 527/2004 Dr. Bharat Tewari Vs. State of Uttaranchal and another.

4. The applicant moved the present application before this Court. The applicant has alleged in his application that the applicant was neither a complainant nor a witness in the complaint which was dismissed by the Court, as such, no proceeding under Section 500 Cr.P.C. can be initiated against the applicant. The learned counsel for the applicant had filed the copies of the statement recorded under Section 200 and 202 Cr.P.C.

5. It is revealed from the perusal of the record that the complaint was filed by Moolchand against

Jagdamba Prasad Tiwari under Secion 420 and 406 I.P.C. in the Court of Chief Judicial Magistrate, Orai in the year 1987 and one Kamlesh was witness in this case and the accused was acquitted by the Chief Judicial Magistrate and further awarded a sum of Rs. 1000/- as compensation to the accused Jagdamba Prasad Tiwari from the complainant Moolchand. An appeal was preferred against that order. The appeal was only allowed to the extent that the order directing the complainant to pay compensation of Rs. 1000/- to the accused was set aside and the order of the acquittal of the accused was maintained. Thereafter, Jagdamba Prasad, the accused in that case filed a complaint before the Chief Judicial Magistrate, Haridwar against the Moolchand and three other persons. Admittedly, the applicant was neither the complainant nor the witness in the criminal case which was decided by the Chief Judicial Magistrate, Jalon. The complaint which was filed by Jagdamba Prasad Tiwari under Section 500 Cr.P.C. before the court of Chief Judicial Magistrate, Haridwar wherein it was alleged that the complaint was lodged against accused Ram Tiwari, Advocate who was practicing at Kalpi, Distt. Jalon and the present applicant was accused No. 4 in the said complaint who is the brother of the accused No. 2. It was further alleged that there is a litigation with regard to the Dharmshala property situated at Haridwar in between the complainant and the accused No. 4 Bharat Tiwari. The complainant filed a civil suit before the Munsif against the accused No. 4 for seeking the eviction of the accused No. 4 from

the said Dharmshala. As soon as he came to know such suit is pending, the accused No. 4 started to initiate the criminal proceeding against the complainant. The applicant with the intention to harass got filed a case against the complainant through his brother Ram Tiwari-Advocate against the respondent No. 2 in the present case. The Chief Judicial Magistrate, Orai under Section 420 and 406 I.P.C. issued warrant to the accused. The accused were in collusion with each other to defame the complainant. Thus, the present complaint was filed and the statement was recorded.

6. After hearing the parties, the order dated 16.07.2005 was passed. The apparent clerical mistake which was pointed out in para 3 at line 4 of the judgment that one Bharat Tiwari had lodged a false case. It should have been the name of Moolchand in place of Bharat Tiwari and one paragraph should be added after para 3 which is as under.

"Perusal of the complaint as well as the record reveal that Moolchand filed a complaint against Jagdamba Prasad Tiwari in the Court of Jalon under Section 420 and 406 I.P.C. The record reveals that the applicant was not a party in the criminal case pending before the Court of Chief Judicial Magistrate, Jalon."

7. The Jurisdiction of the Court to modify or to review its judgment is limited to the extent it is a clerical error. It is an established principle of law

that any judgment in criminal case is delivered or order signed, it cannot be altered except clerical errors. The learned counsel for the applicant contended that the applicant was neither a party to the proceedings nor he was connected with the criminal prosecution decided by the Jalon Court, as such no defamation complaint under Section 500 Cr.P.C. is maintainable and his case covered under Section 499 Cr.P.C. Exception 8. The court has already discussed this matter at length in **Sewakram Sobhani Vs. R.K. Karanjiya, AIR 1981 SC 1514** wherein it has been held that :-

"*Several questions arise for consideration if the Ninth Exception is to be applied to the facts of the present case. Was the Article published after exercising due care and attention? Did the author of the article satisfy himself that there were reasonable grounds to believe that the imputations made by him were true? Did he act with reasonable care and a sense of responsibility and propriety? Was the article based entirely on the report of the Deputy Secretary or was there any other material before the author? What steps did the author take to satisfy himself about the authenticity of the report and its contents? Were the imputations made rashly without any attempt at verifications? Was the imputation the result of any personal ill will or malice which the author bore towards the complainant? Was it the result of any ill will or malice which the author bore towards the political group to which the complainant belonged? Was the article merely intended to malign and scandalize the*

complainant or the party to which he belonged? Was the article intended to expose the rottenness of a jail administration which permitted free sexual approaches between male and female detenus? Was the article intended to expose the despicable character of persons who were passing off as saintly leaders? Was the article merely intended to provide salacious reading material for readers who had a peculiar taste for scandals? These and several other questions may arise for consideration, depending on the stand taken by the accused at the trial and how the complainant proposes to demolish the defence. Surely the stage for deciding these questions has not arrived yet. Answers to these questions at this stage, even before the plea of the accused is recorded can only be a priori conclusions. 'Good faith' and 'public good' are, as we said, questions of fact and matters for evidence. So, the trial must go on."

8. In view of the above observation, it is for the trial court to see whether the accusation is false within the Exception 8 or not. I do not find any weigh in the said contention. The application is partly allowed to the following extent:-

The applicant clerical mistake pointed out in para 3 at line 4 of the judgment that one Bharat Tiwari had lodged a false case, it should have been the name of Moolchand in place of Bharat Tiwari and one paragraph should be added after para 3 which is as under:-

"Perusal of the complaint as well as the record reveal that Moolchand filed a complaint case against Jagdamba Prasad Tiwari in the Court of Jalon under Section 420 and 406 I.P.C. The record reveals that the applicant was not a party in the criminal case pending before the court of Chief Judicial Magistrate, Jalon."

(J.C.S. RAWAT, J.)

December 2, 2005
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